IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Short, et al.
Serial No. : 09/866,379
Filed : May 24, 2001
Title : RECOMBINANT BACTERIAL PHYTASES AND USES THEREOF

Art Unit : 1652
Examiner : Delia M. Ramirez, Ph.D.

Commissioner for Patents
Washington, D.C. 20231

DECLARATION UNDER 37 C.F.R. §1.132

1. I, **Nelson Barton**, having an address at 10928 Sunset Ridge Dr., San Diego, CA 92131, am a Principal Scientist, and have been employed by Diversa Corporation since May 15, 2000. As a Principal Scientist, my responsibilities at Diversa include overseeing research projects and ensuring that the laboratory runs efficiently and effectively.

2. On November 26, 2002, I deposited the plasmid, pPIC9, containing gene 819PH59, in *E. coli* XL1-Blue with the ATCC, located at 10801 University Blvd., Manassas, VA 20110-2209. The Patent Deposit Designation is PTA-4822. A copy of the notification from a representative of the ATCC acknowledging acceptance of the deposit is attached.

3. The deposited material is the same as that described in the specification of the instant application at least at page 14, paragraph 47; page 15, paragraphs 52-55; and Figures 3-6.

4. I believe this to be true because, as is our standard practice, in mid-July, 2000, the gene known as 819PH59 was constructed in pQE60 in *E. coli* and labeled "9X". One portion of "9X" sample was assayed on July 27, 2000, indicating the sequence of the nucleic acid. Another portion of the "9X" sample was sent to the sequencing department at Diversa, who confirmed the sequence on August 2, 2000. Another portion of the "9X" sample was stored in a glycerol stock at –80°C.

On February 10, 2001, the glycerol stock containing gene 819PH59 was thawed. The gene was transformed into *E. coli* XL1-Blue, via the plasmid pQE60. This construct was then stored in a glycerol stock at –80°C.

In September 2001, the glycerol stock containing gene 819PH59 was thawed. The gene was PCR amplified and inserted into the pPIC9 vector and transformed into *E. coli* XL1-Blue and labeled as BD7422. This construct was then stored in a glycerol stock at –80°C.

When it was time to prepare 819PH59 for ATCC deposit, I went to the person in charge of maintaining all the frozen clones and requested the vial labeled BD7422, which contained gene 819PH59 (in pPIC9 in *E. coli* XL1-Blue). A portion was scraped from the frozen BD7422 sample and plated on agar media to produce single colonies. These single colonies were used to prepare liquid cultures. A portion of the culture was used to prepare DNA for sequence verification of the 819PH59 sequence. The remaining culture was used to prepare 30 glycerol stocks and frozen for shipment to the ATCC for deposit. On November 25, 2002, Lynn Linkowski, of Diversa Corporation, coordinated and executed the deposit of the glycerol stocks of 819PH59 with the ATCC. The samples were received by ATCC on November 26, 2002, and assigned Patent Deposit Designation PTA-4822.

5. Accordingly, I submit that the deposited material, PTA-4822, was in our possession at the time of filing of the instant application and that the deposited material is the same material as that described in the specification as 819PH59.

6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Respectfully Submitted

Date: 3/13/03

Nelson Barton
Principal Scientist

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DECLARATION FOR A DEPOSIT MADE UNDER THE BUDAPEST TREATY

1. I, **Mi Kim**, having an address at 4350 La Jolla Village Drive, Suite 500, San Diego, CA 92122, am the attorney of record of the above-referenced United States patent application serial no.09/866,379. I declare that:

2. A deposit of gene 819ph59 in E. coli XL1-Blue was made with the ATCC, located at 10801 University Blvd., Manassas, VA 20110-2209. The Patent Deposit Designation is PTA-4822.

3. The deposit was received by the ATCC on November 26, 2002 and accepted by the International Depository Authority under the provisions of the Budapest Treaty, as indicated in the attached notification.

4. All restrictions upon public access to the deposit will be irrevocably removed upon the grant of a patent on this application.

5. The deposit will be replaced if viable samples cannot be dispensed by the depository as required.

6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under

Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Respectfully Submitted

Date: 3/26/2003

Mi Kim
Reg. No. 44,830

ATCC

10801 University Blvd • Manassas, VA 20110-2209 • Telephone: 703-365-2700 • FAX: 703-365-2745

BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

INTERNATIONAL FORM

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3 AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.2

To: (Name and Address of Depositor or Attorney)

DIVERSA Corporation
Attn: Lynn Linkowski
4955 Directors Place
San Diego, CA 92121

Deposited on Behalf of: DIVERSA CORPORATION

Identification Reference by Depositor:	**Patent Deposit Designation**
Plasmid: 819PH59 in E.coli XL1-Blue	PTA-4822

The deposit was accompanied by: __ a scientific description __ a proposed taxonomic description indicated above.

The deposit was received November 26, 2002 by this International Depository Authority and has been accepted.

AT YOUR REQUEST: X We will inform you of requests for the strain for 30 years.

The strain will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the strain, and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said strain.

If the culture should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace it with living culture of the same.

The strain will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the culture cited above was tested December 4, 2002. On that date, the culture was viable.

International Depository Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:

Marie Harris

Marie Harris, Patent Specialist, ATCC Patent Depository

Date: January 6, 2003

cc: Gregory Einhorn
(Ref: Docket or Case No.: 09010-029006)